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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing	)	
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Filing Date:	August 24, 2022	)	Case No.: PSH-22-0136
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Issued: December 28, 2022

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**Administrative Judge Decision**

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Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be restored.

**I. Background**

A DOE Contractor employs the Individual in a position for which he holds a security clearance. To obtain and maintain his access authorization, the Individual signed and submitted Questionnaires for National Security Positions (QNSP) on October 14, 2014, and November 20, 2019. Exhibits (Exs.) 15 and 16. In both QNSPs, the Individual disclosed two separate arrests and charges of Public Intoxication (PI), one in 1985 and one in 1987. Ex. 16 at 39-40; Ex. 15 at 45-46. As part of the 2014-2015 clearance process, a background investigation was conducted by the Office of Personnel Management (OPM), which revealed that the Individual was charged with Minor Possession in March 1987. Ex. 17 at 206. The Individual was given his clearance at the conclusion of the investigation. Ex. 17 at 99.

On April 3, 2019, while holding an access authorization, the Individual was notified that he was selected for a random breath alcohol test (BAT) after reporting to work. Ex. 12 at 1; Ex. 10 at 2, 4. The Individual was tested, and results came back positive for alcohol at .034, and again at .030. Ex. 12 at 1; Ex. 10 at 2, 7. Based on these results, the Local Security Office (LSO) directed the

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<sup>1</sup> The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

Individual to complete a Letter of Interrogatory (LOI), which he signed and submitted on May 18, 2019. Ex. 12.

On February 15, 2022, the Individual self-reported that he was arrested and charged with PI on February 10, 2022. Ex. 9 at 1-4, 9. Again, the LSO directed the Individual to complete an LOI in order to obtain more information regarding the incident. Ex. 11. Subsequently, the LSO instructed the Individual to undergo a psychological evaluation, which was conducted by a DOE-consultant psychologist (DOE Psychologist) on May 26, 2022.<sup>2</sup> Ex. 13. The DOE Psychologist relied on the information she obtained in the clinical interview with the Individual, as well as her review of the Individual's Personnel Security File (PSF), and the *Diagnostic Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition* (DSM-V). The DOE Psychologist also conducted a collateral interview with the Licensed Professional Clinical Counselor and Substance Abuse Professional (LPCC) whose Intensive Outpatient Treatment program (IOP) the Individual began attending in May 2022. Ex. 13 at 4. On June 6, 2022, the DOE Psychologist issued a report (the Report) containing her assessments and conclusions, which included a diagnosis of Unspecified Alcohol-Related Disorder. Ex. 13 at 6.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance and that his clearance had been suspended. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and submitted 28 exhibits, marked as Exhibits A through BB. The DOE Counsel presented the testimony of one witness, the DOE Psychologist, and submitted seventeen exhibits marked as Exhibits 1 through 17.

## **II. Notification Letter and Associated Concerns**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G of the Adjudicative Guidelines. Ex. 1. Under Guideline G (Alcohol Consumption), "[e]xcessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern

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<sup>2</sup> A Phosphatidylethanol (PEth) blood test was performed in conjunction with the evaluation. Ex. 13 at 5. PEth tests "detect[] any significant alcohol use over the past three to four weeks." Ex. 13 at 5. The Individual's PEth result came back negative. Ex. 13 at 5.

are “[a]lcohol-related incidents away from work...regardless of frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder[,]” and “[d]iagnosis by a duly qualified medical or mental health professional...of alcohol use disorder[.]” Adjudicative Guidelines at ¶ 22(a) and (d).

In invoking Guideline G, the LSO alleged that: 1) after conducting a psychological evaluation of the Individual on May 26, 2022, the DOE psychologist stated in her June 6, 2022, Report that the Individual meets the diagnostic criteria for an Unspecified Alcohol-Related Disorder, pursuant to the DSM-V, and that not only does the Individual’s consumption impair his judgement, but that he did not show adequate evidence of rehabilitation or reformation; 2) the Individual was arrested and charged with PI after he consumed approximately four beers and one large beer, “equaling the size of two beers,” approximately two to three hours before his arrest; 3) the Individual underwent a random alcohol test in April 2019, which indicated a blood alcohol content of .034 and .030 after he had consumed eight beers over the span of three-and-a-half hours the night before, reaching a state of intoxication; 4) the Individual was arrested and charged with PI in July 1987; 5) the Individual was arrested and charged with Minor Possession in March 1987, and 6) the Individual was arrested and charged with PI in September 1985. Ex. 1 at 1-2. Based on the foregoing, the LSO’s invocation of security concerns under Guideline G is justified.

### **III. Regulatory Standards**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **IV. Findings of Fact and Hearing Testimony**

The Individual stated in his testimony that he was charged with PI in 1985 when he attempted to make a purchase at a store in the early morning hours, at which point, he was stopped by law enforcement and asked questions pertaining to a crime that had been committed nearby. Tr. at 20-

21. He was placed under arrest, taken to a jail, and released the next day. Tr. at 20. He testified that he believes the charges were dismissed, as he does not remember making a court appearance. Tr. at 20. The Individual also testified that he was arrested and charged with PI in 1987 when he was approached by law enforcement while pumping gas after leaving a nightclub. Tr. at 22. He stated that he was arrested because he was in a state of intoxication. Tr. at 22. He resolved the matter by entering “a plea of no contest.” Tr. at 22.

Regarding the 1987 minor possession charge, the Individual testified that he was not arrested, but rather, “ticketed for that offense.” Tr. at 21. He testified that he was enjoying the outdoors with some friends while they were in the possession of “open containers[,]” and since “nobody owned up to the open container[,]” they “were all ticketed for the open containers.” Tr. at 21. The Individual indicated that he resolved the matter by paying the fine. Tr. at 21-22.

The Individual admitted that he consumed alcohol as a teenager and young man, stating that he “was probably a heavy drinker on the weekends.” Tr. at 23. The Individual told the DOE Psychologist and confirmed in his testimony that he reduced his alcohol consumption when he decided to start a family with his spouse. Ex. 13 at 3; Tr. at 23. The Individual continued to consume alcohol on the weekends while performing such activities as yardwork or chores. Ex. 13 at 3. The Individual would also consume approximately two alcoholic beverages on the occasions he would enjoy a meal in a restaurant. Ex. 13 at 3; Tr. at 24. This pattern of consumption continued until the Individual produced the positive alcohol test at work in April 2019. Ex. 13 at 3; Tr. at 17. The Individual indicated in his May 2019 LOI that the day before the BAT was administered, he had consumed approximately eight beers from 6:00 pm to 9:00 pm, and “[he] knew [he] was legally intoxicated.” Ex. 12 at 1-2. When he reported to work, “[he] thought [he] had followed procedure to ensure that [he] was fit for work.” Ex. 12 at 3. He testified that he “did not perceive there to be a problem with his sample” because he had discontinued consuming alcohol eight hours before reporting to work. Tr. at 17-18. He also testified that immediately following this incident, he started refraining from consuming alcohol twenty-four hours prior to beginning a work shift. Tr. at 18, 48. The Individual was temporarily removed from the Human Reliability Program (HRP) and was placed on administrative leave. Ex. 10 at 4; Ex. 12 at 3-4. Following this incident, the Individual enrolled in an IOP consisting of one weekly group session as well as three individual sessions, which he completed in June 2019. Ex. 13 at 4; Ex. 12 at 4; Tr. at 18-19, 48. The Individual was diagnosed with Alcohol Use Disorder (AUD), Mild, and returned to work in May 2019. Ex. 13 at 4; Ex. 12 at 5. The Individual did not consume alcohol for approximately fourteen months. Ex. 13 at 3-4; Tr. at 48, 60-61. He stated that after he completed the IOP, his intention was to remain abstinent. Tr. at 62.

The Individual confirmed in his testimony and informed the DOE Psychologist that he began consuming alcohol again while on vacation in June 2021. Ex. 13 at 3; Tr. at 60-61. The Individual told the DOE Psychologist that prior to the February 2022 incident, he was consuming a beer “every two weeks, on Friday or Saturday, and never on a night when he had to work the next day.” Ex. 13 at 3. The Report also indicates that “he estimated that he has been intoxicated six to eight times over a 12-month period over the past 10 years (except for his 14-month abstinence in 2019-2020).” Ex. 13 at 3. The Individual testified and told the DOE Psychologist that he was last intoxicated during 2022 New Year celebrations. Ex. 13 at 3.

The Individual indicated that on the day of the most recent incident in February 2022, he proceeded to the airport with his spouse and child. Ex. 13 at 2; Tr. at 14, 24. Prior to leaving his home, the Individual consumed approximately three or four beers,<sup>3</sup> and once he reached the airport, he consumed a large beer that he estimated to be the equivalent of two beers or approximately twenty-four ounces. Ex. 13 at 2; Ex. 9 at 8; Tr. at 15. While at the airport, the Individual began to loudly argue with his spouse, attracting the attention of nearby law enforcement personnel, who approached the couple. Ex. 13 at 2; Ex. 9 at 8; Tr. at 14, 42-44, 53-54. The Individual and his family members were asked for their identification, which the Individual refused to provide. Ex. 13 at 2-3; Ex. 9 at 8; Tr. at 44. Law enforcement personnel proceeded handcuff the Individual, detained him in separate room, and administered a breath test. Ex. 13 at 2; Ex. 9 at 9; Tr. at 44. He was transported to a detention center, from which he was released the following day. Ex. 9 at 9. The Individual testified that during the incident, he made some statements “that [were not] flattering” when he suggested that law enforcement must have a reason to request identification from individuals, as “this is not Nazi Germany.” Tr. at 44. The Individual was charged with PI.<sup>4</sup> Ex. 13 at 2; Ex. L; Ex. N; Tr. at 44-45. Upon self-reporting the incident on February 15, 2022, the Individual was temporarily removed from the HRP. Ex. 9 at 6; Tr. at 54. In her Report, the DOE Psychologist opined that the Individual’s alcohol consumption on the day of the February 2022 incident constituted “an episode of binge drinking[.]” Ex. 13 at 2.

The Individual testified and told the DOE Psychologist that he has not consumed alcohol since February 10, 2022,<sup>5</sup> and stated that he is confident his sobriety will continue. Ex. 13 at 4; Tr. at 24, 26, 36. Following the incident, the Individual enrolled in an IOP, which he started on May 2, 2022, and successfully completed on June 27, 2022. Exs. F and R at 1; Ex. S. The LPCC told the DOE Psychologist that he diagnosed the Individual with AUD, Mild, and that he believed the Individual had “a binge-drinking pattern of alcohol consumption, with some indications of tolerance.” Ex. 13 at 4. The IOP consisted of hour-long individual therapy sessions, “frequency not determined,” as well as group therapy sessions that would last up to three hours, “four nights per week.” Ex. R at 1; Ex. 13 at 4. The LPCC also told the DOE Psychologist that the Individual’s participation in the IOP “exceed[ed] [his] expectations,” and that the Individual’s prognosis was positive. Ex. 13 at 4. Upon completing the IOP, it was recommended that the Individual attend a weekly aftercare program, which he has, as confirmed by his testimony and a letter submitted by his IOP treatment provider.<sup>6</sup> Exs. R, S, and T; Tr. at 19. “Aftercare sessions are an hour long, one

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<sup>3</sup> The Individual stated in his testimony he drank three beers prior to going to the airport. Tr. at 15. However, the Report indicates he drank four beers. Ex. 13 at 2.

<sup>4</sup> He entered a plea of not guilty to the underlying criminal matter, which was resolved in early August 2022 and resulted in a deferred disposition. Ex. L; Tr. at 16. The Individual testified that he had not violated any of the terms of the deferred disposition, and accordingly, the matter was dismissed. Tr. at 16-17.

<sup>5</sup> The Individual also submitted into the hearing record eight PEth test results from April 8, 2022, to November 29, 2022, all of which were negative. Ex. 6 at 3; Exs. A, B, C, E, O, P, Q, AA, and BB; Tr. at 28. Following the February 2022 incident, the Individual was also subject to a BAT test on April 5, 2022, which was negative. Ex. A.

<sup>6</sup> In the letter, the Individual’s IOP provider also indicated that the Individual receives support from other aftercare attendees, and that “he took advantage of a professional’s opinions, feedback, and guidance.” Ex. R at 1. The treatment provider also stated that the Individual has experienced growth, “has a good and beneficial prognosis,” and can “fall back on his own skills” in the event he faces a trigger. Ex. R at 1. The Individual testified that he saw his IOP provider when he first sought treatment and only occasionally thereafter. Tr. at 30.

to two nights weekly.”<sup>7</sup> Ex. R at 1. The Individual testified that he still attends hour-long aftercare sessions once per week, and that his LPCC did not suggest Alcoholics Anonymous (AA) attendance in addition to aftercare. Tr. at 19, 27, 46, 55. The Individual is afforded the opportunity to discuss different matters during aftercare sessions, including triggers, relationships, and addiction. Tr. at 46-47. He has since learned that he “[does not] need to drink alcohol to have a good time[.]” as this is how he used alcohol in the past. Tr. at 47, 50. The Individual testified that in addition to continuing with aftercare, he attends meetings once a week at his church to “discuss different parts of the faith[.]”<sup>8</sup> and participates in community service activities. Tr. at 27-28; Exs. H, X, and Y; Tr. at 51, 56-57. He confirmed that engaging in his faith tradition helps him remain sober and that his community service activities “are helpful in times that are stressful[.]” Tr. at 36, 51, 56. Further, the Individual expressed his ability to rely on his spouse, other family members, fellow aftercare participants, and members of his faith community when he needs support and testified that he tries to avoid situations that may trigger his craving for alcohol. Tr. at 51, 63-66. He testified that he seeks assistance by discussing triggers and coping strategies with his aforementioned support network. Tr. at 63-66. The Individual confirmed in his testimony that he does not intend to drink alcohol in the future, and explained that his past alcohol use has “hurt [his] reputation[.]” and “affected [his] kids.” Tr. at 29, 49-50, 62-63.

In her Report, the DOE Psychologist indicated that she diagnosed the Individual with Unspecified Alcohol-Related Disorder, and opined that “[s]uch consumption would impair his judgement[.]” Ex. 13 at 6; Tr. at 26. She concluded in her Report that she did not have adequate evidence of rehabilitation or reformation, and that in order for the Individual to achieve rehabilitation or reformation, she recommended that he successfully complete an IOP, provide negative monthly PEth tests, and participate in aftercare, as recommended by the LPCC, for at least 90 days. Ex. 13 at 6. At the hearing, the DOE Psychologist testified that after hearing the Individual’s testimony, it was her opinion that the Individual had “demonstrated rehabilitation and reformation.” Tr. at 71-72. She indicated that in forming this opinion, she considered the fact that the Individual complied with the recommendations she made in her Report, and that she was persuaded by the Individual’s stated motivations for remaining abstinent. Tr. at 72.

The Individual also submitted several letters from character witnesses into the record. Exs. I and U. One character witness described the Individual “a man of great integrity, honesty, trustworthiness, responsibility, and loyalty[.]” and another indicated that the Individual “displays a professional character[.]” Ex. U at 1-2. One letter indicated that the Individual is a dependable person, a “go to guy,” and another voiced the belief that the Individual not only “goes above and beyond” in his work duties, but that he is “trustworthy and reliable.” Ex. I; Ex. U at 3.

## V. Analysis

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<sup>7</sup> The LPCC indicated that aftercare meetings consisted of “once-per-week group counseling sessions[.]” Ex. 13 at 4.

<sup>8</sup> The Individual also intends to and is taking active steps to join a social group in his faith tradition. Tr. at 27, 36. At some social events, members of this social group consume alcohol. Tr. at 51-52. When asked about this fact, the Individual testified that he intends to join the group to serve his community, as the group participates in community service activities. Tr. at 52

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline G include:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23(a)-(d).

I find that the Individual has mitigated the Guideline G concerns as stated in the SSC. Prior to receiving the DOE Psychologist's Report, the Individual enrolled in an IOP and successfully completed the program in late June 2022. Not only did the Individual complete the recommended 90 days of aftercare, but he also continues to attend aftercare meetings on a weekly basis. Further, as the Individual testified, his reputation and responsibilities motivate him to remain sober. The DOE Psychologist found these motivating factors particularly compelling and sincere. Additionally, the Individual has shifted his perspective when it comes to consuming alcohol, as he is now aware that he does not need to drink in order to celebrate occasions and have fun. As the Individual testified, he enjoys a strong support system in his spouse, family, fellow aftercare attendees, and other church members. The Individual was also able to articulate how he copes with circumstances that he finds triggering, and as indicated in the letter provided by his IOP provider, the Individual is able to "fall back on his own skills" if "face[d with] relapse or triggers[.]" Ex. R at 1. He also provided testimony indicating that his involvement in community service and the study of his faith tradition help him remain abstinent. Finally, at the time of the hearing, the Individual had been sober for approximately ten months, as corroborated by monthly PEth testing, and the DOE Psychologist testified that the Individual had demonstrated adequate evidence of rehabilitation and reformation.

It must be noted that the Individual has a history of relapse. In 2021, after successfully completing an IOP and remaining abstinent for fourteen months, the Individual resumed his problematic consumption of alcohol. He resumed drinking notwithstanding the legal difficulties and work-related hardships his alcohol consumption caused. However, after acknowledging his past maladaptive alcohol use, the Individual completed all of the recommendations made by the DOE Psychologist, which included the successful completion of an IOP, continues to participate in

aftercare, and remains abstinent from alcohol, as corroborated by regular testing. Accordingly, I find that the Individual has mitigated the Guideline G concerns pursuant to the mitigating factors at ¶ 23(b) and (d).

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh  
Administrative Judge  
Office of Hearings and Appeals